

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

DEMARQUISA HENDERSON, #2117365           §  
VS.   §                       CIVIL ACTION NO. 4:17cv371  
DIRECTOR, TDCJ-CID                               §

ORDER OF TRANSFER

Petitioner DeMarquisa Henderson, an inmate confined at the Choice Moore Unit of the Texas prison system, proceeding *pro se*, brings this petition for a writ of habeas corpus challenging his conviction pursuant to 28 U.S.C. § 2254. Petitioner is in custody pursuant to a Harrison County conviction for the offense of possession of a controlled substance.

The law governing the proper venue for a petition for a writ of habeas corpus filed by an inmate in state custody is 28 U.S.C. § 2241(d), which states the following:

Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

*See Wadsworth v. Johnson*, 235 F.3d 959 (5th Cir. 2000). Within the context of § 2241(d), courts have traditionally held that the most appropriate venue for challenges to the legality of a conviction is in the district court for the district within which the State court was held which convicted and sentenced the petitioner, while challenges to the implementation of the sentence, such as prison disciplinary matters,

should be considered in the district court for the district where such person is in custody. *See, e.g., King v. Lynaugh*, 729 F.Supp. 57 (W.D. Tex. 1990). The Fifth Circuit explained the basis for choice of venue as follows:

Under 28 U.S.C. § 2241(d), state convicts may file federal habeas petitions in the district where they are confined or where they were they were convicted. The purpose of this, of course, is to provide a more convenient forum for witnesses. . . . Section 2241(d) militates in favor of filing the applicant's petition in . . . the division where the witnesses are located, rather than in . . . the division in which the applicant is confined.

*Mitchell v. Henderson*, 432 F.2d 435, 436 (5th Cir. 1970). The Fifth Circuit made it clear that the purpose of the statute is to provide a more convenient forum for witnesses.

In the present case, Petitioner is confined at the Choice Moore Unit in Bonham, Texas, which is in the Sherman Division. He was convicted in Harrison County. All of his grounds for relief relate to his Harrison County conviction. The pertinent witnesses are located there. The most appropriate venue in this matter lies in the Eastern District of Texas, Marshall Division. 28 U.S.C. § 124(c)(4). Section 2241(d) permits the district court where a petition is filed to transfer the case to the appropriate court where it could have been filed, which in this case is the district within which the state court was held which convicted and sentenced Petitioner. Therefore, the petition should be transferred to the Eastern District of Texas, Marshall Division. It is accordingly

**ORDERED** that the petition is **TRANSFERRED** to the Eastern District of Texas, Marshall Division. 28 U.S.C. § 2241(d) and Local Order 95-2. The Clerk of Court shall transfer the case forthwith and without delay.

**SIGNED this 7th day of June, 2017.**



Christine A. Nowak  
UNITED STATES MAGISTRATE JUDGE